

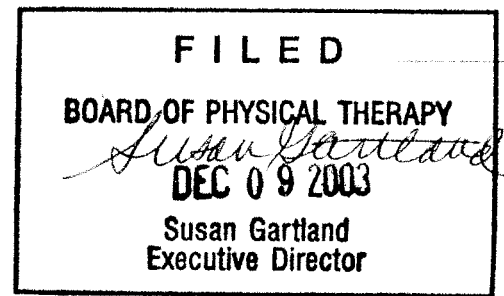


State of New Jersey

OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS

NEW JERSEY STATE BOARD OF PHYSICAL THERAPY EXAMINERS
124 HALSEY STREET, 6TH FLOOR, NEWARK NJ

JAMES E. MCGREEVEY
Governor



PETER C. HARVEY
Attorney General
RENI ERDOS
Director

Mailing Address:

P.O. Box 45014
Newark, NJ 07101
(973) 504-6455

By Certified and Regular Mail

November 5, 2003

Jason Fogu, P.T.
2 Seaview Court
Bayonne, NJ 07002

Re: Modified offer of Settlement In Lieu of Filing a Formal Disciplinary Complaint

Dear Mr. Fogu:

Please be advised that the Board of Physical Therapy Examiners (the "Board") had an opportunity to review your letter dated September 25, 2003 in response to the modified offer of settlement previously issued to you by the Board. The Board has taken into consideration the arguments raised therein and has agreed to delete the reference to your failure to prepare a discharge summary in this matter. Therefore, you will note that violation of N.J.A.C. 13:39A-3.1(a)13 is deleted. As detailed below, the Board had previously reduced the amount of the penalties for the violation of N.J.A.C. 13:39A-3.6(a) from \$2500 to \$1000 and the violation of N.J.A.C. 13:39A-3.8(a)8 from \$2500 to \$1000. The amount of costs remain the same. You are further advised that the Board has not agreed to reduce the penalty charged for violation of N.J.A.C. 13:39-3.1(a)7 and 9. The penalty for this violation remains at \$1000. The total amount of penalties due from you remains at \$3000.

Your request for a six month deferral period prior to the initial payment of the penalty is denied by the Board. The Board will allow you to remit payment in monthly installments over the next two years. The initial installment payment is due immediately upon your signing of the modified offer of settlement.

This letter is to advise you that the New Jersey State Board of Physical Therapy Examiners has had an opportunity to review information concerning the physical therapy services performed on patient, V.D while employed at Northeast Spine and Wellness Center located at 67 Westfield Avenue in Clark, NJ. Specifically, the information reviewed included the patient and billing records of V.D. and your testimony from the investigative inquiry on October 8, 2002.

Upon review of all available information, the Board has preliminarily found that probable cause exists to support a finding that you violated N.J.S.A. 45:1-21(e) and N.J.A.C. 13:39A-3.1, 13:39A-3.6 and 13:39A-3.8(a)8. The patient record of V.D. and your testimony support that you consistently billed for manual therapy when you actually provided therapeutic exercise. Manual therapy is reimbursed at a higher rate than therapeutic exercise. The Board considers this action to constitute professional misconduct as a violation of N.J.A.C. 13:39A-3.8(a)8 in that by providing a different treatment than what was billed for it appears that the records falsified the activity which was provided for the purpose of obtaining payment for services which were not rendered.

The Board also determined that the billing in this patient's case which averaged \$370 to \$400 a visit were excessive as the nature of the services provided constituted home exercises which do not require skilled intervention by the physical therapist in violation of N.J.A.C. 13:39A-3.6(b).

The Board also recognized that the documentation in the patient records failed to contain a subjective history for the knee and failed to include any changes or modifications to the treatment, the plan of care did not establish measurable goals and failed to include a discharge summary all in violation of N.J.A.C. 13:39A-3.1(a)7 and 9.

At this juncture, the Board has preliminarily concluded that the above violations are sufficient to warrant the initiation of formal disciplinary proceedings against you. Notwithstanding that decision, however, the Board has determined that it will first offer you an opportunity to settle this matter, and thereby avoid the initiation of formal disciplinary proceedings, should you consent to:

1. cease and desist from maintaining incomplete patient records;
2. the issuance of a formal reprimand;
3. pay a penalty in the amount of \$3000.00 (to be paid in equal installment payments over a two year period commencing immediately upon your signing of the acknowledgment at the bottom of this letter); This amount consists of \$1000 for violation of N.J.A.C. 13:39A-3.6(a), \$1000 for violation of N.J.A.C. 13:39A:3.8(a)8 and \$1000 for violations of N.J.A.C. 13:39A-3.1.
4. pay costs incurred by the Board in the amount of \$543.00

If you are willing to settle this matter on the offered settlement terms, you may do so by signing the acknowledgment at the bottom of this letter, and returning it to the Board office. Upon your signature, this letter will be a matter of public record.

In the event you are unwilling to settle this matter on the offered terms, it will be referred to the Attorney General's office for the initiation of appropriate enforcement action. In such event, you will be afforded an opportunity to defend against the alleged

violations. If an evidentiary hearing is deemed warranted, the Board will either conduct that hearing at a date and time to be scheduled or refer the matter to the Office of Administrative Law. You are advised, however, that in the event formal charges are filed, the Board may assess civil penalties in an amount greater than those herein offered in settlement should any charges against you be sustained. Additionally, the Board may, if the facts are found to so warrant, enter an order requiring you to reimburse certain monies and/or requiring you to pay the additional costs incurred by the Board. Should you have any questions concerning this letter or the settlement offer herein, I suggest that you contact Deputy Attorney General Carmen A. Rodriguez, who may be reached at (973) 648-3696.

If you elect to settle this matter now you should sign the acknowledgment at the bottom of this letter and return it to the Board within fifteen (15) days following your receipt of this letter. In the event that the Board receives no response from you within fifteen (15) days, the Board's settlement offer will be withdrawn, and the matter will be referred to the Attorney General's Office for the initiation of appropriate enforcement proceedings.

NEW JERSEY STATE BOARD OF
PHYSICAL THERAPY EXAMINERS

By: Susan Gartland
Susan Gartland
Executive Director

ACKNOWLEDGMENT: I, Jason Fogu, P.T., hereby acknowledge that I have read and reviewed the modified settlement proposal set forth in the above letter. I acknowledge the conduct which has been charged. I am aware that, by signing this acknowledgment, I am waiving any rights I may have to defend myself against any charges of wrongdoing at an administrative hearing. I am also aware that the action taken against me by the Board herein is a matter of public record, and that this letter is a public document. I hereby agree to pay a penalty in the amount of \$3000 plus costs (to be paid in installment payments over a two year period commencing upon signing of this acknowledgment), and to comply with all other requirements set forth in the settlement letter. The penalty shall be paid in equal installments of

\$147.65

Jason Fogu
Jason Fogu, P.T.

Dated: 12/01/03

cc: Carmen A. Rodriguez, Deputy Attorney General